
HOUSE BILL No. 1390

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-4-1-4; IC 27-8-32.

Synopsis: Pharmacy benefit managers. Specifies certain requirements that apply to a pharmacy benefit manager. Makes a violation of the requirements an unfair and deceptive act or practice in the business of insurance.

Effective: July 1, 2007.

Welch, Fry

January 16, 2007, read first time and referred to Committee on Insurance.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1390



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.1-2006,
2 SECTION 487, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 4. The following are hereby defined
4 as unfair methods of competition and unfair and deceptive acts and
5 practices in the business of insurance:

- 6 (1) Making, issuing, circulating, or causing to be made, issued, or
- 7 circulated, any estimate, illustration, circular, or statement:
 - 8 (A) misrepresenting the terms of any policy issued or to be
 - 9 issued or the benefits or advantages promised thereby or the
 - 10 dividends or share of the surplus to be received thereon;
 - 11 (B) making any false or misleading statement as to the
 - 12 dividends or share of surplus previously paid on similar
 - 13 policies;
 - 14 (C) making any misleading representation or any
 - 15 misrepresentation as to the financial condition of any insurer,
 - 16 or as to the legal reserve system upon which any life insurer
 - 17 operates;



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- (D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or
- (E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.
- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.
- (3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.
- (5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.
- (6) Issuing or delivering or permitting agents, officers, or

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1 employees to issue or deliver, agency company stock or other
 2 capital stock, or benefit certificates or shares in any common law
 3 corporation, or securities or any special or advisory board
 4 contracts or other contracts of any kind promising returns and
 5 profits as an inducement to insurance.

6 (7) Making or permitting any of the following:

7 (A) Unfair discrimination between individuals of the same
 8 class and equal expectation of life in the rates or assessments
 9 charged for any contract of life insurance or of life annuity or
 10 in the dividends or other benefits payable thereon, or in any
 11 other of the terms and conditions of such contract; however, in
 12 determining the class, consideration may be given to the
 13 nature of the risk, plan of insurance, the actual or expected
 14 expense of conducting the business, or any other relevant
 15 factor.

16 (B) Unfair discrimination between individuals of the same
 17 class involving essentially the same hazards in the amount of
 18 premium, policy fees, assessments, or rates charged or made
 19 for any policy or contract of accident or health insurance or in
 20 the benefits payable thereunder, or in any of the terms or
 21 conditions of such contract, or in any other manner whatever;
 22 however, in determining the class, consideration may be given
 23 to the nature of the risk, the plan of insurance, the actual or
 24 expected expense of conducting the business, or any other
 25 relevant factor.

26 (C) Excessive or inadequate charges for premiums, policy
 27 fees, assessments, or rates, or making or permitting any unfair
 28 discrimination between persons of the same class involving
 29 essentially the same hazards, in the amount of premiums,
 30 policy fees, assessments, or rates charged or made for:

31 (i) policies or contracts of reinsurance or joint reinsurance,
 32 or abstract and title insurance;

33 (ii) policies or contracts of insurance against loss or damage
 34 to aircraft, or against liability arising out of the ownership,
 35 maintenance, or use of any aircraft, or of vessels or craft,
 36 their cargoes, marine builders' risks, marine protection and
 37 indemnity, or other risks commonly insured under marine,
 38 as distinguished from inland marine, insurance; or

39 (iii) policies or contracts of any other kind or kinds of
 40 insurance whatsoever.

41 However, nothing contained in clause (C) shall be construed to
 42 apply to any of the kinds of insurance referred to in clauses (A)

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1 and (B) nor to reinsurance in relation to such kinds of insurance.
2 Nothing in clause (A), (B), or (C) shall be construed as making or
3 permitting any excessive, inadequate, or unfairly discriminatory
4 charge or rate or any charge or rate determined by the department
5 or commissioner to meet the requirements of any other insurance
6 rate regulatory law of this state.

7 (8) Except as otherwise expressly provided by law, knowingly
8 permitting or offering to make or making any contract or policy
9 of insurance of any kind or kinds whatsoever, including but not in
10 limitation, life annuities, or agreement as to such contract or
11 policy other than as plainly expressed in such contract or policy
12 issued thereon, or paying or allowing, or giving or offering to pay,
13 allow, or give, directly or indirectly, as inducement to such
14 insurance, or annuity, any rebate of premiums payable on the
15 contract, or any special favor or advantage in the dividends,
16 savings, or other benefits thereon, or any valuable consideration
17 or inducement whatever not specified in the contract or policy; or
18 giving, or selling, or purchasing or offering to give, sell, or
19 purchase as inducement to such insurance or annuity or in
20 connection therewith, any stocks, bonds, or other securities of any
21 insurance company or other corporation, association, limited
22 liability company, or partnership, or any dividends, savings, or
23 profits accrued thereon, or anything of value whatsoever not
24 specified in the contract. Nothing in this subdivision and
25 subdivision (7) shall be construed as including within the
26 definition of discrimination or rebates any of the following
27 practices:

28 (A) Paying bonuses to policyholders or otherwise abating their
29 premiums in whole or in part out of surplus accumulated from
30 nonparticipating insurance, so long as any such bonuses or
31 abatement of premiums are fair and equitable to policyholders
32 and for the best interests of the company and its policyholders.

33 (B) In the case of life insurance policies issued on the
34 industrial debit plan, making allowance to policyholders who
35 have continuously for a specified period made premium
36 payments directly to an office of the insurer in an amount
37 which fairly represents the saving in collection expense.

38 (C) Readjustment of the rate of premium for a group insurance
39 policy based on the loss or expense experience thereunder, at
40 the end of the first year or of any subsequent year of insurance
41 thereunder, which may be made retroactive only for such
42 policy year.

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1 (D) Paying by an insurer or insurance producer thereof duly
 2 licensed as such under the laws of this state of money,
 3 commission, or brokerage, or giving or allowing by an insurer
 4 or such licensed insurance producer thereof anything of value,
 5 for or on account of the solicitation or negotiation of policies
 6 or other contracts of any kind or kinds, to a broker, an
 7 insurance producer, or a solicitor duly licensed under the laws
 8 of this state, but such broker, insurance producer, or solicitor
 9 receiving such consideration shall not pay, give, or allow
 10 credit for such consideration as received in whole or in part,
 11 directly or indirectly, to the insured by way of rebate.

12 (9) Requiring, as a condition precedent to loaning money upon the
 13 security of a mortgage upon real property, that the owner of the
 14 property to whom the money is to be loaned negotiate any policy
 15 of insurance covering such real property through a particular
 16 insurance producer or broker or brokers. However, this
 17 subdivision shall not prevent the exercise by any lender of the
 18 lender's right to approve or disapprove of the insurance company
 19 selected by the borrower to underwrite the insurance.

20 (10) Entering into any contract, combination in the form of a trust
 21 or otherwise, or conspiracy in restraint of commerce in the
 22 business of insurance.

23 (11) Monopolizing or attempting to monopolize or combining or
 24 conspiring with any other person or persons to monopolize any
 25 part of commerce in the business of insurance. However,
 26 participation as a member, director, or officer in the activities of
 27 any nonprofit organization of insurance producers or other
 28 workers in the insurance business shall not be interpreted, in
 29 itself, to constitute a combination in restraint of trade or as
 30 combining to create a monopoly as provided in this subdivision
 31 and subdivision (10). The enumeration in this chapter of specific
 32 unfair methods of competition and unfair or deceptive acts and
 33 practices in the business of insurance is not exclusive or
 34 restrictive or intended to limit the powers of the commissioner or
 35 department or of any court of review under section 8 of this
 36 chapter.

37 (12) Requiring as a condition precedent to the sale of real or
 38 personal property under any contract of sale, conditional sales
 39 contract, or other similar instrument or upon the security of a
 40 chattel mortgage, that the buyer of such property negotiate any
 41 policy of insurance covering such property through a particular
 42 insurance company, insurance producer, or broker or brokers.

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1 However, this subdivision shall not prevent the exercise by any
 2 seller of such property or the one making a loan thereon of the
 3 right to approve or disapprove of the insurance company selected
 4 by the buyer to underwrite the insurance.
 5 (13) Issuing, offering, or participating in a plan to issue or offer,
 6 any policy or certificate of insurance of any kind or character as
 7 an inducement to the purchase of any property, real, personal, or
 8 mixed, or services of any kind, where a charge to the insured is
 9 not made for and on account of such policy or certificate of
 10 insurance. However, this subdivision shall not apply to any of the
 11 following:
 12 (A) Insurance issued to credit unions or members of credit
 13 unions in connection with the purchase of shares in such credit
 14 unions.
 15 (B) Insurance employed as a means of guaranteeing the
 16 performance of goods and designed to benefit the purchasers
 17 or users of such goods.
 18 (C) Title insurance.
 19 (D) Insurance written in connection with an indebtedness and
 20 intended as a means of repaying such indebtedness in the
 21 event of the death or disability of the insured.
 22 (E) Insurance provided by or through motorists service clubs
 23 or associations.
 24 (F) Insurance that is provided to the purchaser or holder of an
 25 air transportation ticket and that:
 26 (i) insures against death or nonfatal injury that occurs during
 27 the flight to which the ticket relates;
 28 (ii) insures against personal injury or property damage that
 29 occurs during travel to or from the airport in a common
 30 carrier immediately before or after the flight;
 31 (iii) insures against baggage loss during the flight to which
 32 the ticket relates; or
 33 (iv) insures against a flight cancellation to which the ticket
 34 relates.
 35 (14) Refusing, because of the for-profit status of a hospital or
 36 medical facility, to make payments otherwise required to be made
 37 under a contract or policy of insurance for charges incurred by an
 38 insured in such a for-profit hospital or other for-profit medical
 39 facility licensed by the state department of health.
 40 (15) Refusing to insure an individual, refusing to continue to issue
 41 insurance to an individual, limiting the amount, extent, or kind of
 42 coverage available to an individual, or charging an individual a

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1 different rate for the same coverage, solely because of that
 2 individual's blindness or partial blindness, except where the
 3 refusal, limitation, or rate differential is based on sound actuarial
 4 principles or is related to actual or reasonably anticipated
 5 experience.

6 (16) Committing or performing, with such frequency as to
 7 indicate a general practice, unfair claim settlement practices (as
 8 defined in section 4.5 of this chapter).

9 (17) Between policy renewal dates, unilaterally canceling an
 10 individual's coverage under an individual or group health
 11 insurance policy solely because of the individual's medical or
 12 physical condition.

13 (18) Using a policy form or rider that would permit a cancellation
 14 of coverage as described in subdivision (17).

15 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
 16 concerning motor vehicle insurance rates.

17 (20) Violating IC 27-8-21-2 concerning advertisements referring
 18 to interest rate guarantees.

19 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 20 coverage for victims of abuse.

21 (22) Violating IC 27-8-26 concerning genetic screening or testing.

22 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 23 insurance producers.

24 (24) Violating IC 27-1-38 concerning depository institutions.

25 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
 26 the resolution of an appealed grievance decision.

27 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or
 28 IC 27-8-5-19.2.

29 (27) Violating IC 27-2-21 concerning use of credit information.

30 (28) Violating IC 27-4-9-3 concerning recommendations to senior
 31 consumers.

32 **(29) Violating IC 27-8-32 concerning pharmacy benefit**
 33 **managers.**

34 SECTION 2. IC 27-8-32 IS ADDED TO THE INDIANA CODE AS
 35 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2007]:

37 **Chapter 32. Pharmacy Benefit Managers**

38 **Sec. 1. As used in this chapter, "covered individual" means an**
 39 **individual who is entitled to coverage under a health benefit plan.**

40 **Sec. 2. As used in this chapter, "department" refers to the**
 41 **department of insurance created by IC 27-1-1-1.**

42 **Sec. 3. As used in this chapter, "generic drug" refers to a**

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1 generically equivalent drug product (as defined in IC 16-42-22-4).

2 Sec. 4. (a) As used in this chapter, "health benefit plan" means
3 any of the following:

4 (1) A policy of accident and sickness insurance (as defined in
5 IC 27-8-5-1).

6 (2) An individual contract (as defined in IC 27-13-1-21) or a
7 group contract (as defined in IC 27-13-1-16) entered into with
8 a health maintenance organization (as defined in
9 IC 27-13-1-19).

10 (3) A state program that provides payment for health care
11 services.

12 (4) Another program that provides coverage for health care
13 services to individuals who reside or are employed in Indiana.

14 (b) The term "health benefit plan" does not include the
15 following:

16 (1) A short term travel or accident only policy.

17 (2) A short term nonrenewable policy of not more than six (6)
18 months duration.

19 (3) A policy, contract, or program described in subsection (a)
20 that does not provide coverage for prescription drugs.

21 Sec. 5. As used in this chapter, "health benefit plan provider"
22 means a person that undertakes to provide coverage for health
23 care services under a health benefit plan.

24 Sec. 6. As used in this chapter, "health care services" has the
25 meaning set forth in IC 27-13-1-18.

26 Sec. 7. As used in this chapter, "labeler" means a person that:

27 (1) receives prescription drugs from a manufacturer (as
28 defined in IC 25-26-14-8) or wholesale drug distributor (as
29 defined in IC 25-26-14-12);

30 (2) repackages the prescription drugs described in subdivision
31 (1) for later retail sale; and

32 (3) possesses a labeler code from the federal Food and Drug
33 Administration under 21 CFR 270.20 (1999).

34 Sec. 8. (a) As used in this chapter, "pharmacy benefit manager"
35 means a person that administers prescription drug benefits
36 provided under a health benefit plan, including performance of the
37 following functions:

38 (1) Mail order pharmacy services.

39 (2) Claims processing, including retail pharmacy network
40 management and payment of claims to pharmacies.

41 (3) Clinical formulary development and management.

42 (4) Rebate contracting and administration.

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- (5) Implementation of the following:**
 - (A) Patient compliance programs.**
 - (B) Therapeutic intervention programs.**
 - (C) Generic drug substitution programs.**
 - (D) Disease management programs.**
 - (b) The term "pharmacy benefit manager" includes the following:**
 - (1) A person that contracts with or is employed by a pharmacy benefit manager to perform the duties of the pharmacy benefit manager.**
 - (2) A mail order pharmacy that is owned or operated by a pharmacy benefit manager.**
- Sec. 9. A pharmacy benefit manager owes a fiduciary duty to a health benefit plan provider with which the pharmacy benefit manager enters into a contract and shall perform the fiduciary duty in accordance with state and federal law.**
- Sec. 10. (a) A pharmacy benefit manager shall do the following:**
- (1) The pharmacy benefit manager shall make the pharmacy benefit manager's claims payment records available to the department upon request.**
 - (2) Before substitution of a prescription drug for another prescribed drug may occur, the pharmacy benefit manager shall:**
 - (A) obtain approval of the substitution from the original prescribing health care provider; and**
 - (B) notify the covered individual and the dispensing pharmacist that the original prescribing health care provider has approved the substitution.**
 - (3) If substitution of a prescription drug for another prescribed drug is required by the pharmacy benefit manager and the substitute prescription drug costs more than the prescribed drug, the pharmacy benefit manager shall:**
 - (A) disclose to the health benefit plan provider the cost of each drug and any benefit that accrues to the pharmacy benefit manager as a result of the substitution; and**
 - (B) transfer to the health benefit plan provider the full benefit received by the pharmacy benefit manager as a result of the substitution.**
 - (4) If the pharmacy benefit manager receives any benefit based on sales, substitution, or prescription of particular prescription drugs or classes or brands of prescription drugs dispensed in Indiana, the pharmacy benefit manager shall**

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remit to a health benefit plan provider the full benefit derived from dispensed prescription drugs covered by the health benefit plan provider.

(5) The pharmacy benefit manager shall disclose to a health benefit plan provider all financial terms and arrangements for remuneration between the pharmacy benefit manager and a prescription drug manufacturer or labeler, including the following:

- (A) Formulary management and drug exchange programs.
- (B) Educational support.
- (C) Claims processing fees and pharmacy network fees charged to retail pharmacies.
- (D) Data sales fees.

(b) The information that is required to be disclosed under subsection (a)(5) may be designated to be confidential by the pharmacy benefit manager. Information designated to be confidential under this subsection may not be disclosed by the health benefit plan provider without the consent of the pharmacy benefit manager unless the disclosure is ordered by a court. This subsection does not limit the authority of the department to obtain and use information described in this subsection in any proceeding.

Sec. 11. A violation of this chapter is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.

Sec. 12. The requirements of this chapter must be incorporated into any contract that is entered into, amended, or renewed after June 30, 2007, between a pharmacy benefit manager and a health benefit plan provider doing business in Indiana.

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